

**MINUTES OF THE
SOUTH OGDEN CITY SPECIAL COUNCIL MEETING
Tuesday, July 22, 2014 – 6:00 p.m.
Council Chambers, City Hall**

COUNCIL MEMBERS PRESENT

Mayor James F. Minster, Council Members Sallee Orr, Wayne Smith, Russ Porter, Bryan Benard and Brent Strate

STAFF MEMBERS PRESENT

City Manager Matthew Dixon, Parks and Public Works Director Jon Andersen, Chief of Police Darin Parke, Fire Chief Cameron West, City Attorney Ken Bradshaw, Good Landlord Program Coordinator Andrew Hyder and Recorder Leesa Kapetanov

CITIZENS PRESENT

Kathy Bybee, James Johnson, DeVon & Bonieta Deppe, Connie Kaufman, Stephen Hensley, Debby Bliss, Paul & Breann Miller, Robert Bliss, Jim & Jennifer McGregor, Litsa Bournakis, Chris Bournakis, Dena Bournakis, Anna Bournakis, Bill Rembacz, Bonnie Rembacz, Julie Furness, Sherri Stratford, Scott Stratford, Margo Milianta, Kim Didier, Norbert Didier, Ralph Rees, Walt Bausman, Ross & Dixie Clause, Evelyn Bertilson, Nancy Gibson-Fagg, Craig Summers, Gary Gibson, Dirk Beckett, Andy Kancitis, Shelley Kancitis, Ted Killian, Doug & Cindy Hale, Sherman & Rudy Strate, John and Judy Faulkner, Rosalind O'Loughlin, Julie Cottrell, Laurel & Tyler DeGroot, Eric & Tami Hargrove, Sheridan Sheffield, Katrina Hall, Mike Hall, Denise Dumas, Greg Dumas, Jen Dunyon, Jeff Lensman, Merlin Bingham, Duane & Cathy Beus, Alan Bybee, Chris & Rebecca Gurnee, Ben Slater, Tyson Slater, Tel Boman and others

I. CALL TO ORDER

Mayor James F. Minster called the meeting to order at 6:02 pm and asked for a motion to convene.

Council Member Smith moved to convene as the South Ogden City Council, with a second from Council Member Porter. In a voice vote Council Members Strate, Orr, Benard, Porter and Smith all voted aye.

Mayor Minster welcomed those in attendance, stating that a special council meeting could be called by two or more members of the council. Council Member Strate and Council Member Orr had called for this special meeting.

Mayor Minster asked Council Member Orr the purpose of the meeting. Council Member Orr said they had wanted clarification on what the council's options and powers were concerning conditional use permits. Council Member Strate added the main question was who the land use authority, as designated by Utah Code and City Code, was in the city.

The mayor then stated this meeting was not a public hearing and there would not be any opportunity for public comments.

II. DISCUSSION / ACTION ITEMS

A. Discussion on the City's Zoning Regulations and Appeal Authority Process

Mayor Minster said Council Member Strate had emailed some questions to City Manager Dixon he would like answered. They would begin the discussion by reading through the questions and answering them. Council Member Strate interrupted the mayor and said his questions were probably not the best, and could be summarized to one question, who is the land use authority in South Ogden City. The mayor asked City Attorney Ken Bradshaw if he would like to answer the question. Mr. Bradshaw said that currently the land use authority, as designated by the council, was the planning commission. Council Member Strate asked for a reference in the city code which stated such. Mr. Bradshaw cited Ordinance 07-15, which he said stated the city's land use authority was the planning commission. Council Member Benard said it was also stated in City Code 10-3-6. Mr. Benard then said he had another question to raise. He had noticed on the conditional use permit itself (note: the questions raised at this meeting were in response to a conditional use permit application for a residential facility for disabled persons for the property located at 6000 S 1075 E) it said that the decision would be appealed to the city council. He had been under the impression that would be the case until he was told it would go to the hearing officer. He then explained the difference between a zoning issue, as cited in City Code 10-3-6, and said the council would retain authority for all ordinances pertaining to zoning; this was different than the conditional use permit in question-it was not a zoning issue. City Code 10-3-6 also stated the planning commission would have such other powers and duties as may be prescribed by law; if one looked at the Utah Code pertaining to those powers and duties, it stated that as long as there was an ordinance establishing a planning commission, then the city could delegate the land use authority to the planning commission. Council Member Benard then referred to City Code 10-15-2. This part of the code stated that conditional use permits may be revoked by the city council after review and recommendation by the planning commission for failure to comply with conditions imposed with the original approval of the permit. It was his understanding the authority to revoke was the only power the city council retained in connection with conditional use permits.

Council Member Strate commented that in action, the land use authority had always rested with the city council. He then read City Code 10-15-3(D), which stated that decisions on conditional use applications should be forwarded to the city council. He referred to UCA§ 10-9a-301 which cited how a planning commission should be established, stating it was the only place that suggested that the council had given away its land use authority. Mr. Strate then referred to UCA§ 10-9a-103, reading the definitions of "Appeal authority", stating that it was absolutely clear based on 10-4 of the city code that the city had an appeal authority. Council Member Benard pointed out that appeal authority was the hearing officer. Council Member Strate agreed. He then read the state code definition of "land use authority" and asked if the city had designated the planning commission as the land use authority, and if the answer was yes, the city had been doing business incorrectly for a long time. If the city had not designated the planning commission as the land use authority, then by default, the authority went to the local legislative body. He then asked if the planning commission could, by state law, be the land use authority. He was uncertain, but based on what he had read, the answer was no. The planning commission was a recommending body. He asked again who the land use authority was and deferred to other members of the council.

Council Member Benard acknowledged Council Member Strate's efforts, but felt that City Code 10-3-6 was very clear and that the city had long ago delegated the authority on land use decisions to the planning commission, except for the situations where it was reserved for zoning.

City Manager Dixon asked the council to turn to 10-15-4 of the City Code, and said the section made clear that the planning commission had been given authority to make decisions on conditional use applications.

Council Member Strate referred to 10-4 of the City Code, saying it listed all sorts of items, i.e. by going to the idea that under a CUP the authority had been delegated to the planning commission, by default that would delegate all land use authority to the planning commission. During his time as a council member he had seen the process time after time; the planning commission made recommendations to the council and the council either approved it or disapproved it. He was not aware of anything that went before the appeal authority, but he could not think of a time when it didn't come to the council. He disagreed with the interpretation of the wording in the code and felt the code was unclear. Mr. Strate then gave an example of a time that the density in an R-5 zone was recommended for approval by the planning commission and then came before the city council. The council discussed the matter and then approved it. Had they not approved it, the applicant could have appealed to the appeal authority. He said the council had always operated under the guise that the council was the appeal authority; it was unquestionable.

Council Member Benard pointed out Mr. Strate's example was concerning zoning, and the council always saw zoning changes; however, during his time on the council, he did not recall any conditional use permits coming before them. It was clear in the code that the council had given the planning commission authority to make decisions on conditional use applications, although he felt that should be changed.

Council Member Strate said he believed if the council did not have authority to make decisions on conditional use applications, they also did not have authority to act on zoning decisions as given in his example. If the council delegated its land use authority to the planning commission, it was for everything, but he did not believe the council had done that. He felt it was a debatable point. State code was clear that if there was any doubt as to who the land use authority was, it reverted to the city council; it was absolutely clear.

Council Member Porter pointed out the planning commission was made up of people whom the council gave their advice and consent to and the council had been pleased with what they had done in the past. The planning commission understood land use issues better than the council. He felt the council should use caution; it almost sounded as if the council thought the planning commission made the wrong decision, the council would change it. It also sounded as if the council wanted to pick and choose when it was the authority based on whether they liked the commission's decisions. Mr. Porter felt the council should trust the commission.

Council Member Strate said he did not distrust the planning commission, but did not think it was within their purview to do that. He felt as a political official it was his sworn duty and responsibility to represent the residents of South Ogden within the bounds of law and it was the council's responsibility to hear the conditional use permit application. He felt the code was unclear, and anything that was unclear should come back to its rightful place. In his interpretation of the city code, he believed they were the land use authority.

Council Member Benard said the code was not ambiguous at all as to who has the authority to rule on a conditional use permit. City Code 10-15-4 very clearly stated "the planning commission may deny or permit the conditional use to be located within any zone in which the particular conditional use is permitted". The authority had been expressly delegated to the planning commission. Mr. Benard then pointed out the code stated anyone had the right to appeal the decision, which then referred to the section on the appeal authority. It was his opinion the council had delegated their authority. He said that although some clarification may be needed as to what other authority the council may have delegated, it was very clear they had delegated authority on conditional use permits to the planning commission.

Council Member Smith commented the council should focus on city code rather than state code in their discussion. Council Member Strate said state code gave cities their authority. He referred to State Code 10-9a-302(3) which said “an appropriate delegation of power to at least one designated land use authority to hear and act on a land use application”. Council Member Benard then pointed out City Code 10-15-4 clearly stated that the planning commission had that delegation of power for conditional use permits, despite the fact that he himself would like to have a say in this particular application. Council Member Strate said they were defining the planning commission and the land use authority as the same entity, and he did not think it was wise, nor what the code said, nor how he thought the city had been operating.

Council Member Benard asked for an example; in his research, he had not seen any conditional use permits come before the council. Mr. Strate replied that if they determined that night that the planning commission was the city’s land use authority, then they would be giving them land use authority over everything. Council Member Porter disagreed. He felt the council had authority over many land use decisions, such as zoning, but it was clear the planning commission had authority to make decisions on conditional use permits; they had never come before the council. Mr. Porter hoped the planning commission would deny this particular application, but it was their decision. Council Member Benard reiterated the council could delegate a portion of their authority, all of their authority, or one aspect of their authority; the code defined what had been delegated.

The council discussed different processes when the planning commission gave recommendations to the council and the council made the final decision, and times when the planning commission had the authority to make the decision, such as on conditional use permits.

Council Member Strate commented they had at least delineated the council’s position regarding that particular conditional use permit and there was clear understanding to all parties as to what the process was regarding any issue that may come before them. If the council determined they did not want a say in the matter, then that is how it would be, but he respectfully disagreed. He then determined he would like to make a motion.

Council Member Strate moved that the South Ogden City Council is the land use authority.

Council Member Benard said the motion needed to be clearer, as they had already determined that the city council was already the land use authority on certain items. He also pointed out the issue was not what the council does or doesn’t want, it was a matter of following the law; they had sworn an oath to do so. He cautioned Mr. Strate to be careful with his motion, as it suggested they would be going against statute. Council Member Strate clarified that the planning commission, when dealing with conditional use permits, was both the land use authority and the planning commission. If there was an appeal to their decision, it would go to the appeal authority; that is how it appeared to be argued. Council Member Benard said it appeared as to what the ordinance stated. Council Member Smith pointed out if the current ordinance was not what the council wanted, they should change it.

Council Member Orr asked if a conditional use permit was a land use ordinance as mentioned in State Code 10-9a-302(2). There was discussion as to the definition of a land use ordinance, zoning changes and conditional use permits and what was allowed in the current zoning ordinance. Council Member Strate commented the definitions of some of the conditional uses in the current ordinance had outgrown their time and do not apply as interpreted currently.

There were no more comments from the council. The mayor asked if council or staff had any further comments or questions, and seeing none, he called for a motion to adjourn.

IX. ADJOURN

Council Member Smith moved to adjourn, followed by a second from Council Member Benard. The vote to adjourn was unanimous.

The meeting ended at 7:03 pm.

I hereby certify that the foregoing is a true, accurate and complete record of the South Ogden City Council Meeting held Tuesday, July 22, 2014.


Leesa Kapetanov, City Recorder

Date Approved by the City Council _____ September 16, 2014 _____